

In re ) Fair Hearing No. 11,179  
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Appeal of )

The petitioner appeals the decision by the Department of Social Welfare to deny her participation in the Reach Up program due to her current ability to support her family at a level matching 125% of the federal poverty guidelines.

1. The petitioner is a mother of two school aged children and an A.N.F.C. recipient who initially applied for assistance with job training through the Department's "Reach Up" program in February of 1991. At that time she was placed on a waiting list and was called in July of 1991 for an interview. After her interview, she was denied participation because she did not fit into a "target group" and because she already had the capacity to earn income in excess of 125% of the poverty level.

2. The petitioner did not have an appeal hearing regarding that denial. In April of 1992, after learning of the existence of a summer school grant program and hearing that the poverty guidelines may have gone up, the petitioner called the Department and asked that her eligibility be redetermined. No new application was taken. She was told at

that time that she would still be ineligible for the same reasons. The petitioner took an appeal of that oral denial.

3. The petitioner is seeking Reach Up assistance with her post-secondary school education. She started college part-time in February of 1991, about the time she started receiving public assistance. In September of 1991 she became a full-time college student studying special education and psychology. She plans to graduate in 1995 and obtain a teaching certificate.

4. The petitioner has a high school diploma and several years of work experience. From 1977 to 1985 she worked in entry level clerical jobs. From 1980 to 1983 she earned \$261.00 per week as a Directory Assistance Operator with a phone company. From November 1985 to May 1990 she worked first as a clerk, and later as a bookkeeper, for a power company earning \$316.00 per week (\$7.90 per hour.) Following her lay off, she looked for a job with no success for six months in 1990. She finally found a job in November 1992 as a bookkeeper. She worked for one month in that job making \$350.00 per week. She was dismissed from that job for reasons unknown to her. That was her last job before she started school. The petitioner has the ability to type 36 words per minute, can do word processing on a computer and can handle company payroll, and payable and receivable accounts.

5. The petitioner's children's father has been

ordered to pay her \$324.95 monthly in child support and \$50.00 on a \$1,400.00 arrearage which is collected through wage assignment. At present, because she is on A.N.F.C., the petitioner only receives \$50.00 of this money as a passalong.

6. The Department has calculated that, in addition to the child support which is being paid, the petitioner would need the capacity to earn \$4.92 per hour in order to make 125% of the poverty guideline for her family size which is \$14,462.50 annually.

7. The Department offered expert testimony that a person with the petitioner's education, job experience and job skills could be expected to earn at least \$6.00 per hour and more likely between \$7.50 and \$8.00 per hour. Although the petitioner has been out of the job market for over two years, the fact that she has been attending college during that time is considered a positive factor in her employability. While the job market is tight, positions for which the petitioner is qualified which pay \$6.00 or more do exist at present in the local economy and are expected to increase by September of 1992 due to local economic factors.

The above testimony is found to be credible and is adopted as a finding of fact.

8. The petitioner does not really dispute the fact that she could eventually obtain a job earning at least \$6.00 per hour if she seriously looked for bookkeeping work.

She feels strongly, however, that even \$6.00 per hour when

added to her child support is not enough to properly support her children. She feels she is being discouraged from trying to better her life and that of her children by the Department's refusal to help her. The Department's expert agrees with her that she will definitely have a higher level of income than \$6.00 per hour if she completes her teaching certificate.

ORDER

The Department's decision is affirmed.

REASONS

The Department's "Reach Up" program was updated October 1, 1990 to reflect and become Vermont's "JOBS" program set up by the federal Family Support Act of 1988 (Pub. Law 100 - 185). See W.A.M. ¶ 2340. The purpose of that Act is to "assure that needy families with children obtain the education, training, and employment that will help them avoid long-term welfare dependence". 42 U.S.C. ¶ 681(a). The federal regulations further state that "to accomplish this purpose, the JOBS program is intended to;

(1) Encourage, assist, and require applicants for and recipients of AFDC to fulfill their responsibilities to support their children by preparing for, accepting, and retaining employment;

(2) Provide individuals with the opportunity to acquire the education and skills necessary to qualify for employment;

(3) Provide necessary supportive services, including transitional child care and medical assistance, so that individuals can participate in JOBS and accept employment;

(4) Promote coordination of services at all levels of government in order to make a wide range of services available, especially for individuals at risk of long-term welfare dependency, and to maximize the

use of existing resources; and

(5) Emphasize accountability for both participants and service providers.

(b) This part provides that a State IV-A agency, as a condition of participation in the AFDC program, must operate a JOBS program. In addition, these regulations require that States provide child care and other supportive services for participants in the JOBS program, as well as certain other individuals, pursuant to parts 255 and 256. This part contains the policies, rules and regulations pertaining to the Job Opportunities and Basic Skills Training (JOBS) program.

(c) This part is applicable to States with approved JOBS programs pursuant to § 250.20, and to all States as of October 1, 1990.

45 C.F.R. § 250(a)

Effective October 1, 1990, the Department promulgated regulations (none existed before) defining Reach Up eligibility and participation in accord with the federal regulations at 45 C.F.R. § 250.(a) et. seq. As a recipient of A.N.F.C., the petitioner meets the initial eligibility criterion of the program W.A.M. § 2340.

However, the Department determined<sup>1</sup> that the petitioner is ineligible to participate in "Reach Up" due to the following provisions of W.A.M. § 2340.2:

Client Access to Reach Up

Reach up is not an entitlement program. Thus, all parents, other caretaker relatives and out-of-school 16 and 17 year old dependent children who apply for or receive an ANFC grant do not have a right to participation in the Reach Up program.

Limited program funding makes it impossible to offer the opportunity to participate to all otherwise eligible ANFC applicants or recipients who seek to participate in the program. In addition, all otherwise eligible ANFC applicants or recipients who volunteer to participate in the Reach Up program may not necessarily

be offered the opportunity to participate on a first-come, first-served basis.

Otherwise eligible ANFC applicants or recipients who volunteer for participation in Reach Up may be denied the opportunity to participate for one or more of the following reasons:

. . .

3. The applicant or recipient has a work history which demonstrates his or her capacity to provide earnings which, in combination with the family's other income (including the potential earnings of the applicant or recipient and those of the second parent or other caretaker relative's spouse) would provide the family with an income above 125 percent of the applicable federal poverty line. Family income shall be determined using the same method as described under 2 above.

This reason shall not be the basis for denial of participation in Reach Up if the applicant or recipient is no longer able to engage in the job(s) which are included in his or her work history and which provided the level of earnings described above. . .

One hundred and twenty-five percent of the poverty guideline for the petitioner's family of three is currently \$14,462.50 annually or \$1,205.21 monthly. If the petitioner were not an A.N.F.C. recipient, she would receive \$324.95 monthly in child support. Therefore, she would be expected to be able to provide \$880.26 per month in income to meet this standard. When that amount is divided by the 172 hours which are typically in a work month the total is \$5.12 per hour.<sup>2</sup>

There was ample credible evidence based both on her previously earned wages and typical wages of persons with similar skills that the petitioner most likely would be paid at least \$6.00 per hour for her services. There is also

credible evidence that a current market, albeit not as large as in better economic times, for bookkeepers in her geographical area. Therefore, the Department acted in concert with its own regulations when it found the petitioner ineligible for services.

The petitioner herself does not really urge that the Department is mistaken in its calculations or interpretations of its rules. Her real complaint is that the rules adopted by the Department eliminate assistance to persons who can get any employment, however low-paying, and acts as a disincentive for those persons to improve their family's situation. She argues that the policy behind the narrowing of eligibility basically to those who are not even marginally employable is unfair and does nothing to help highly motivated welfare recipients who really want to take their families out of poverty.

While the petitioner's observation may be true, she has pointed to no legal authority which would require that the Department do more for her and persons in her situation. There is nothing in the federal law or regulation which suggests that the Department must define the "avoidance of long-term welfare dependence", "self-sufficiency" and the "ability to provide financial support for their children" in terms of any standard more generous than the one they have chosen, i.e., just slightly above basic poverty level. In order to prevail, the petitioner must show that the Department's adoption of the 125% guideline will not

eliminate her dependency on welfare. Although her own beliefs about the future of herself and her children without the education she is seeking are unfortunately probably quite founded, she presented no fact to show that a \$6.00 per hour job will still cause her to be welfare dependent. The Department's decision must, therefore, be upheld.

FOOTNOTES

<sup>1</sup>At the hearing, the Department acknowledged that it should have taken a written application and given a written denial of services to the petitioner. This defect was not raised as an appeal ground by the petitioner. Even though this is not an "entitlement" program, basic fairness requires written applications and decisions.

<sup>2</sup>The Department apparently included the \$50.00 in arrearages being paid as income to the family when it reached its figure of \$4.92. However, as that \$50.00 is repayment of a past due amount, is not current income, and will not continue once it is repaid, it is inappropriate to use it in the calculation.

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